

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION and

THE PEOPLE OF THE STATE OF NEW
YORK, by LETITIA JAMES,
Attorney General of the State of New York,

Plaintiffs,

v.

QUINCY BIOSCIENCE HOLDING
COMPANY, INC., a corporation;

QUINCY BIOSCIENCE, LLC, a limited
liability company;

PREVAGEN, INC., a corporation
d/b/a SUGAR RIVER SUPPLEMENTS;

QUINCY BIOSCIENCE
MANUFACTURING, LLC, a limited liability
company;

MARK UNDERWOOD, individually and as
an officer of QUINCY BIOSCIENCE
HOLDING COMPANY, INC., QUINCY
BIOSCIENCE, LLC, and PREVAGEN, INC.,

Defendants.

Case No. 1:17-cv-00124-LLS

DECLARATION OF GLENN T. GRAHAM

I, Glenn T. Graham, declare as follows:

1. I am a member of the Bars of the States of New York, New Jersey and California, and am Special Counsel with the law firm of Kelley Drye & Warren LLP. I submit this declaration in support of the Motion for Summary Judgment filed by defendants Quincy Bioscience Holding

Company, Inc., Quincy Bioscience, LLC, Prevagen, Inc., Quincy Bioscience Manufacturing, LLC, and Mark Underwood (collectively “Defendants”).

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts of the transcript of the individual deposition of Kenneth Lerner dated August 6, 2020.

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts of the transcript of the 30(b)(6) deposition of Kenneth Lerner dated August 7, 2020.

4. Attached hereto as **Exhibit C** is a true and correct copy of excerpts of the transcript of the individual deposition of Mark Underwood dated August 21, 2020.

5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts of the transcript of the 30(b)(6) deposition of Mark Underwood dated August 20, 2020.

6. Attached hereto as **Exhibit E** is a true and correct copy of excerpts of the transcript of the 30(b)(6) deposition of Todd Olson dated August 5, 2020.

7. Attached hereto as **Exhibit F** is a true and correct copy of Dietary Supplements: An Advertising Guide for Industry, produced in this Action as QUI-FTCNY-00189200—QUI-FTCNY-00189231 (the “FTC Guidance”) and published by the Federal Trade Commission (“FTC”).

8. The FTC Guidance is available on the FTC’s website (<https://www.ftc.gov>). The FTC’s website page containing the FTC Guidance has been modified slightly after the filing of Quincy’s pre-motion letters with respect to its summary judgment motion. (*See* ECF 204).

9. Attached hereto as **Exhibit G** is a true and correct copy of the FTC’s website page containing a link to download the FTC Guidance as it appeared prior to the filing of Quincy’s pre-motion letters.

10. Attached hereto as **Exhibit H** is a true and correct copy of the FTC's current website page containing a link to download the FTC Guidance, available at <https://www.ftc.gov/business-guidance/advertising-marketing/health-claims>, last visited April 13, 2022.

11. The FTC Guidance has not been modified or changed since at least 2001. *See* Ex. F at 31.

12. Attached hereto as **Exhibit I** is a true and correct copy of the Dietary Supplement Health and Education Act of 1994, Public Law 103-417, on the National Institutes of Health Website, available at https://ods.od.nih.gov/About/DSHEA_Wording.aspx, last visited April 11, 2022.

13. Attached hereto as **Exhibit J** is a true and correct copy of a page from United States Food & Drug Administration's ("FDA") website containing the Small Entity Compliance Guide on Structure/Function Claims, available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/small-entity-compliance-guide-structurefunction-claims>, last visited April 11, 2022.

14. Attached hereto as **Exhibit K** are true and correct copies of N.Y. Times articles: Pam Belluck, titled *F.D.A. Panel Declines to Endorse Controversial Alzheimer's Drug*, N.Y. Times (Nov. 16, 2020), available at <https://www.nytimes.com/2020/11/06/health/aducanumab-alzheimers-drug-fda-panel.html>, last visited on April 14, 2022; Pam Belluck and Rebecca Robbins, titled *F.D.A. Approves Alzheimer's Drug Despite Fierce Debate Over Whether It Works*, N.Y. Times (June 7, 2021), available at <https://www.nytimes.com/2021/06/07/health/aduhelm-fda-alzheimers-drug.html>, last visited on April 14, 2022.

15. Attached hereto as **Exhibit L** is a true and correct copy of a National Library of Medicine website page containing the synopsis of *Aducanumab*, LiverTox: Clinical and Research Information on Drug-Induced Liver Injury, National Institute of Diabetes and Digestive and Kidney Diseases (last updated June 9, 2021), <https://www.ncbi.nlm.nih.gov/books/NBK571858/>, last visited on April 14, 2022.

16. Attached hereto as **Exhibit M** is a true and correct copy of the affirmative expert report of Dominik D. Alexander, PhD, MSPH dated April 21, 2021 and served April 22, 2021.

17. Attached hereto as **Exhibit N** is a true and correct copy of excerpts of the transcript of the deposition of Jeremy M. Berg, PhD dated October 8, 2021.

18. Attached hereto as **Exhibit O** is a true and correct copy of the affirmative expert report of David L. Katz, MD, MPH dated April 21, 2021 and served April 22, 2021.

19. Attached hereto as **Exhibit P** is a true and correct copy of the rebuttal report of David L. Katz, MD, MPH dated and served July 16, 2021.

20. Attached hereto as **Exhibit Q** is a true and correct copy of excerpts of the transcript of the deposition of David L. Katz, MD, MPH dated October 20, 2021.

21. Attached hereto as **Exhibit R** is a true and correct copy of the affirmative expert report of Mindy S. Kurzer, PhD dated April 21, 2021 and served April 22, 2021.

22. Attached hereto as **Exhibit S** is a true and correct copy of excerpts of the transcript of the deposition of Mindy S. Kurzer, PhD dated September 29, 2021.

23. Attached hereto as **Exhibit T** is a true and correct copy of the affirmative expert report of Mary Sano, PhD dated April 21, 2021 and served April 22, 2021.

24. Attached hereto as **Exhibit U** is a true and correct copy of excerpts of the transcript of the deposition of Mary Sano, PhD dated October 22, 2021.

25. Attached hereto as **Exhibit V** is a true and correct copy of the declaration of Mary Sano, PhD, dated April 4, 2022.

26. Attached hereto as **Exhibit W** is a true and correct copy of the affirmative expert report of Dr. David H. Schwartz dated and served April 22, 2021.

27. Attached hereto as **Exhibit X** is a true and correct copy of the rebuttal expert report of Dr. David H. Schwartz dated and served July 16, 2021.

28. Attached hereto as **Exhibit Y** is a true and correct copy of excerpts of the transcript of the deposition of Dr. David H. Schwartz dated September 22, 2021.

29. Attached hereto as **Exhibit Z** is a true and correct copy of the rebuttal expert report of Professor Lee-Jen Wei, PhD dated and served July 16, 2021.

30. Attached hereto as **Exhibit AA** is a true and correct copy of the affirmative expert report of Janet Wittes, PhD dated April 21, 2021 and served April 22, 2021.

31. Attached hereto as **Exhibit BB** is a true and correct copy of excerpts of the transcript of the deposition of Janet Wittes, PhD dated October 7, 2021.

32. Attached hereto as **Exhibit CC** is a true and correct copy of excerpts of the transcript of David Gortler, PharmD dated October 15, 2021.

33. Attached hereto as **Exhibit DD** is a true and correct copy of excerpts of Plaintiffs' Responses and Objections to Defendants' First Set of Interrogatories dated August 6, 2021.

34. Attached hereto as **Exhibit EE** is a true and correct copy of excerpts of Plaintiffs' Supplemental Responses and Objections to Defendants' Requests for Admission dated August 6, 2021.

35. Attached hereto as **Exhibit FF** is a true and correct copy of excerpts of Defendants' Fourth Supplemental Responses and Objections to Plaintiffs' First Set of Interrogatories dated October 23, 2020.

36. Attached hereto as **Exhibit GG** is a true and correct copy of excerpts of Defendants' Responses and Objections to Plaintiffs' Second Set of Interrogatories dated June 8, 2020.

37. Attached hereto as **Exhibit HH** is a true and correct copy of the nationwide class action settlement in *Collins, et al. v. Quincy Bioscience, LLC*, No. 1:19-cv-22864-MGC (S.D. Fla.) (the "*Collins* Action") (*Collins* ECF No. 143-1).

38. Attached hereto as **Exhibit II** is a true and correct copy of the Preliminary Approval Order in the *Collins* Action (*Collins* ECF No. 158).

39. Attached hereto as **Exhibit JJ** is a true and correct copy of the Final Order and Judgment in the *Collins* Action (*Collins* ECF No. 200).

40. Attached hereto as **Exhibit KK** is a true and correct copy of the Declaration of Orlando Castillejos ("Castillejos Decl."), the Claims Administrator in the *Collins* Action, and Exhibits A and B to the Castillejos Decl. (*Collins* ECF No. 162-2).

41. Attached hereto as **Exhibit LL** is a true and correct copy of a letter Plaintiffs filed on the *Collins* docket dated November 16, 2020 (*Collins* ECF No. 188).

42. Attached hereto as **Exhibit MM** is a true and correct copy of the order dismissing the only objection to the *Collins* Settlement, filed by a serial objector (*Collins* ECF No. 195).

43. Attached hereto as **Exhibit NN** is a true and correct copy of excerpts of Plaintiffs' Responses And Reply Counter-Findings to Defendants' Proposed Finding of Facts.

44. The Court previously ordered Plaintiffs to produce a sampling of the challenged advertisements that it intended to pursue at trial. (ECF 148.)

45. In response, Plaintiffs provided a list of over 1,600 pages of marketing material produced in discovery, as well as various categories of additional documents that are not identified by bates number. Attached hereto as **Exhibit OO** is a true and correct copy of Amended Ex. A to Plaintiffs' Responses to Quincy's Second Set of Interrogatories dated May 19, 2021.

46. Plaintiffs took thirteen depositions in this Action.

47. I understand that Defendants produced over 200,000 pages of discovery to the FTC in connection with a Civil Investigative Demand issued by the FTC before it commenced this Action.

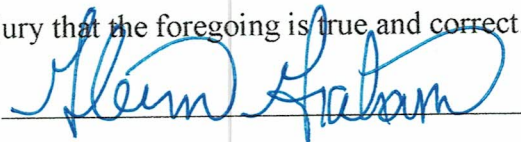
48. Quincy produced more than 190,000 additional pages of documents in discovery over the course of this Action.

49. Attached hereto as **Exhibit PP** is a true and correct copy of the Complaint for a Temporary Restraining Order and Preliminary Injunctive Relief pursuant to Section 13(b) of the Federal Trade Commission Act, filed to commence *Federal Trade Commission v. Intuit, Inc.*, No. 5:22-cv-1973 (N.D. Cal. March 28, 2022).

50. Plaintiffs did not seek a preliminary injunction or a temporary restraining order at any time in this Action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2022.



GLENN T. GRAHAM